IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 384 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SURENDRANAGR JILLA PANCHAYAT BANDHKAM MAJOOR SANGH & 36 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MRS DT SHAH for Petitioner(s) : 1 - 27, 27.2.1,27.2.2 - 37.
MR L B DABHI, Ld.AGP for Respondent(s) : 1 - 3.
==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/01/2006

ORAL JUDGMENT

1. The petitioner association namely Surendranagar Jill Panchayat Bandhkam Mazdoor Sangh and 36 others, have filed this petition under article 226 of the Constitution of India praying for direction to the respondent to appoint them as work charge employees on their respective posts with all monetary and other benefits as if they were made work charge employees from their completion of five years service from the date of their appointments on the basis of circulars dated 04.07.1973 and 16.11.1973. The petitioners have further prayed for the direction to the respondent to make the petitioners work charge employees on their respective posts after completion of five years of service from the date of appointment in the employment in the respondent-department. The petitioners have also prayed for quashing and setting aside the order dated 21.12.1987 and making junior daily wagers as work charge employees in the Sub-Division of Roads and Building Department at Surendranagar.

2. This petition was admitted and rule was issued on

25.04.1988. While admitting the petition, the Court has directed the respondent to file affidavit in reply on or before 31st August, 1988. Despite this direction, the reply was not filed by the respondent and hence, the Court has passed further order on 22nd June, 2004 directing the respondents to file affidavit in reply stating as to what steps have been taken towards the compliance of the aforesaid interim direction issued by the Court. This court has also directed that affidavit in reply should be filed on or before 12th July, 2004. It is only after this second order, the affidavit in reply was filed. The court has, however observed in its order passed on 13.07.2004 that nowhere in the said affidavit in reply it was made clear that the petitioner's representation was considered as per the High Court's order dated 25th April, 1988. The court has therefore directed to place on record as to how many persons were absorbed on the work charge establishment and why the case of the petitioner was not considered.

3. It is the case of the petitioners that they are

under the employment of the respondents as labourers, plumbers, helpers and masons, since March, 1969 and onwards as daily wagers and the details with regard to their services are given in the statement attached to the petition. Before filing of the present petition,they have filed Civil Suit Nos.88/1986 and 200/1986 for a declaration that they are entitled for permanent benefits on the basis of their seniority in the service and, accordingly, they may be treated as such, in the Court of Civil Judge (SD) at Surendranagar, which were withdrawn by the petitioners. It is further stated in the petition that they had requested the respondents to prepare a seniority list on the basis of their dates of appointment, and by a letter dated 2nd July, 1986, the second respondent had informed the first petitioner about the preparation of the seniority list since majority of the daily wage labourers working in the Roads and Building Department belong to the first petitioner-union. Respondent no.3 had also issued letter to the petitioner stating that if they wanted to include their names in the

seniority list, they should firstly withdraw the suit filed by them from the Court. It is further stated that the respondents had prepared a seniority list and had decided to make daily wagers as work charge employees, who had completed service of five years and accordingly they had issued orders in favour of 115 daily wagers working as labourers in the Roads and Building Department, who were juniors to the petitioners. The petitioners had also requested the respondents to make them permanent as a work charge employee on the basis of two circulars, wherein the criteria and eligibility, for the appointment of work charge employees, were specifically mentioned. Despite this fact, the promotions were given to the juniors whereas the petitioners were denied such promotions.

4. Ms.D.T.Shah, learned advocate appearing for the petitioners has submitted that though the petitioners were seniors they were not given promotions to the post of work charge employees. She has further submitted that the respondent

authorities have not followed established procedure for preparing seniority list and hence, their action was absolutely illegal, unjustified and contrary to the provisions of law. She has further submitted that though the names of the petitioners were in the seniority list, merely because of the pendency of their suits they have not issued any promotion order in their favour. The pendency of the suit had no nexus with the issuance of the appointment orders. She has further submitted that junior labourers were made work charge by order at Annexure-D attached to the petition, in spite of the fact that the petitioners were in the employment prior to them on identical work, and hence the order is in violation of Articles 14 and 16 of the Constitution of India.

5. Thought the petition was admitted in the year 1988 and the respondents were directed to file affidavit in reply again and again, the reply dated 7th July, 2004 was produced in the Court on 13th July, 2004. In the said reply, it was stated that by virtue of Government Resolution 31.03.1989 all

daily wagers were considered as per Government Resolution dated 17.10.1988 and not as per any other Government Resolutions. It is further stated that petitioners have got the benefits of Government Resolution dated 17.10.1988. They were also given the orders of work-charge employees as per Government Resolution of 17.10.1988. However, there is no reference of promotion of the daily wagers to the post of work charge daily wagers.

6. Since the affidavit was filed on 7th July, 2004 the petitioners have filed their affidavit in rejoinder on 27th July, 2004, wherein it is specifically stated that circulars referred to in the affidavit in reply, have no application so far as the present case is concerned. The respondents had issued work charge orders in favour of the juniors to the petitioners which fact is not denied in the affidavit in reply. Not only that, the respondents had implemented several circulars from time to time, which were also quoted in the affidavit in rejoinder. It is further stated that promotion orders were issued in favour of those

daily wagers who were juniors at the time when the earlier two circulars were in force, and hence, the petitioner's case is governed by those circulars.

7. A further affidavit was filed on behalf of respondents on 4th August, 2004 wherein it is stated that respondents have filed their affidavit in reply in the light of several circulars issued by Government in the policy of promotions to the cadre of work charge establishment. The promotions were issued by the respondents strictly in accordance with seniority basis only. It is further stated that Government has bifurcated two types of employees i.e. Skilled rojamdar, SSC pass rojamdar. The skilled rojamdar viz. Road roller driver, plumber, carpenter working at site and getting pay as per skilled labour though they are not SSC passed. The other rojamdars are SSC passed and were given administration work in Sub division office and their pay was fixed and promotion was decided as per prevailing circular of Government. It is further stated that seniority list of SSC passed Rojamdar is maintained at Circle level. It is also

stated that the Government policy and circulars for SSC passed daily wagers were separate, exclusive and promotions to work charge establishment are issued on seniority basis by Circle Office.

8. The averments made in further affidavit were denied by the petitioners by filing further affidavit in rejoinder on 13th September, 2004. On behalf of the respondents further sur rejoinder was filed on 20th October, 2004 and to that effect further affidavit in sur rejoinder was filed wherein also the grievance of the petitioners were specifically mentioned. It was stated that seniority list for SSC passed is maintained at Circle Level. It was further stated that in order to mislead and misguide this Court attempt was made to segregate SSC passed and non-SSC passed, skilled employee and non-skilled employee. It is stated that this issue was not under consideration.

9. Mr.I.M.Pandya, learned Assistant Government Pleader on behalf of the respondents has strenuously made an attempt to justify the stand of

the Government and submitted that because of the ban, the further promotions to the daily wagers were not given to the post of work charge employees. The respondents have given promotions in those cases whereas the daily wagers were SCC and therefore, promotions were given. He has further submitted that benefit of Circular of 17.10.1988 was given to work charge employees and since the petitioners were not SSC their cases were not considered and accordingly no reliefs were granted.

10. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings as contained in the memo of petition, different affidavits in reply, affidavits in rejoinder, sur rejoinder and further affidavit and after having gone through the documents including the different Government Resolutions and circulars etc. produced, the Court is of the view that in the year 1988 when the petition was filed it was an admitted position that persons junior to the present petitioners were given orders of work charge employees. This fact

has not been denied in any of the three affidavits filed pursuant to the directions given by this Court. It is not the case of the respondents that juniors to whom the promotions were given were SSC passed. Subsequently, by virtue of ban or government policy if the promotions could not have been given, that would not justify the action which was taken by the respondents in the year 1987-88. Despite questions being asked repeatedly, the learned Assistant Government Pleader is not in a position to point out as to why the petitioners' case was not considered at the time when their juniors were promoted to the post of work charge employees. It therefore appears that action of the respondents is clearly in violation of Articles 14 and 16 of the Constitution of India. Any subsequent event therefore, could not justify the wrong committed by the respondents in the year 1987-88. The respondents are therefore, directed to consider the case of the petitioners in the light of aforesaid direction and if all things are equal, they should also be treated equally as their juniors who were promoted earlier to them. During

the course of argument Ms.Shah, the learned advocate of the petitioners' has drawn attention of this Court to the effect that the petitioner nos. 2 to 9 were already given promotions. The petitioners standing at Sr.Nos.23 and 25 have expired and therefore, if they were entitled to any monetary benefits the same should be given to their heirs. The respondents are further directed to consider the case of the petitioners in the light of aforesaid direction and pass appropriate orders as early as possible preferably within the period of two months from the date of receipt of the writ of this court or from the date of receipt of the certified copy of the order, whichever is earlier.

11. Subject to the above observations and directions, this petition is accordingly disposed of. Rule is made absolute to the aforesaid extent without any order as to costs.

(K.A.PUJ,J.)

amit